Tikigaq Constitutional Act

Point Hope, Alaska

Purpose 3
Section 1: Name of the Tribe and Council 3
Section 2: Governing Body 3
A: Seven Member Council 3
B: Term Length 3
C: Qualifications for Tribal Council Positions 3
D: Quorum 4
E: Officers of the Council 4
F: Duties of Officers 4
G: Conflict of Interest 5
H: Forfeiture of Office and Removal of Council Members 5
I: Vacancies on the Tribal Council 6
Section 3: Membership in the Tikigaq Tribe 6
A: Base Membership Roll 7
B: Descendants of Members 7
C: New Native Members 7
D: Honorary Tribal Members 7
E: Dual Enrollments 7
F: Loss of Membership 8
Section 4: Jurisdiction of the Tribe, Council, and Membership 9
A: Tribal Powers 9
B: Tribal Council Powers 9
C: Powers Reserved to the Membership 9
Section 5: Meetings 10
A: Regular Meeting of the Tribal Council 10
B: Special Meetings 10
C: Notice for Regular, Special, and Tribal Membership Meetings 10
D: Emergency Meetings 10
E: Executive Session 10
F: Tribal Membership Meetings 10
Section 6: Elections 11
A: Voter Qualifications 11

B: General Guidelines for Elections *11*
C: Tribal Council Elections *12*
D: Special Elections *12*
E: Election Committee *12*
F: Election Statute *12*
Section 7: Popular Participation in Government *12*
A: Initiative *12*
B: Referendum *12*
C: Recall *13*
D: Initiative, Referendum, and Recall Decisions *13*
Section 8: Rights of Tribal Members *13*
A: Access to Tribal Records *13*
B: Open Tribal Council Meetings *14*
C: Civil Rights *14*
Section 9: Interpretation and Severability *15*
Section 10: Sovereign Immunity of the Tikigaq Tribe *15*
A: Interpretation of this Act and Waiver for ICRA *15*
B: Procedures and Conditions Waiving Sovereign Immunity *16*
C: Procedures and conditions Waiving Sovereign Immunity by non-governmental *16*
D: Waivers shall be Specific *16*
E: Voiding Prior Waivers Unless Compliant with this Act *16*
Section 12: Savings Clause *16*
Section 13: Amendments *16*
Certificate of Adoption *17*

PURPOSE

We, the Tikigaq Tribe of Alaska, assert our freedom as a sovereign people in a historic relationship with the United States of America, in creating this Tikigaq Constitutional Act. This Act t is intended to provide clarification and interpretation of our historic IRA Constitution adopted by our people and ratified by the Secretary of the Interior on February 29, 1940. We adopt this Act under the traditional and historic inherent sovereign authority of our Tribe, to promote the well-being and unity of this and succeeding generations, to affirm our faith in fundamental Native rights and traditions, and to promote our Tribe's social, cultural, economic and political progress.

SECTION 1 – NAME OF THE TRIBE AND COUNCIL

Our Tribe is called the "Native Village of Point Hope" in the Tikigaq IRA Constitution which was ratified on February 29, 1940, and is so listed on the list of federally recognized tribes. We now go by our Native name of 'Tikigaq.' The 'Native Village of Point Hope' and the 'Tikigaq Tribe' are one in the same. The name used for our Tribe in this Act shall be the 'Tikigaq Tribe.' The governing body of our Tribe shall be the 'Tikigaq Tribal Council', also referred to as the 'Council' in this Act.

SECTION 2 – GOVERNING BODY

(A) Seven Member Council - The Tikigaq Tribal Council shall consist of 7 tribal members who shall be elected by a vote of the Tikigaq Tribal voters.

(B) Term Length - Council members shall serve for 3 year terms, provided that shorter terms may be used to initiate a staggering process. Records of the Council members and the terms they are serving shall be kept in Council files.

(C) Qualifications for Tribal Council Positions - To be eligible to serve on the Tikigaq Tribal Council, candidates must be Tikigaq tribal members, 18 years of age or older, have had no felony convictions in the previous 5 years, physically reside in Tikigaq at least one year immediately prior to the election, and may not work full or part time for the Tribe.

(D) Quorum - Four tribal council members shall constitute a quorum to conduct business at a properly called meeting unless a larger number is specifically required by Constitution, Act, or Tribal Statute to conduct a particular type of business.

(E) Officers of the Council - The officers of the Tribal Council shall be the President, Vice President, Secretary/Treasurer, and Sergeant at Arms. The officers shall be chosen among the Council members after each tribal council election.

(F) Duties of Officers - The duties of the officers shall be as follows:

(1) President Duties and Powers of Executive Order: The President shall preside over meetings of the Council and of the Tribe. The President shall provide general supervision for the affairs of the Tribal Council. The President shall sign, with the Vice President or with the Secretary/Treasurer, all contracts, leases and other documents that have been approved by a quorum of the Council. When the Council is not in session, he shall be the official representative of the Tribe within the limits provided by the Tikigaq IRA Constitution and Constitutional Act, and by Tikigaq Codes or written policies as adopted by the Tikigaq Tribal Council.

(a) Executive Order: Under emergency situations involving the health, safety, and welfare of the Tribe, the President may issue an Executive Order which has full force and effect of a tribal Statute. Such emergency Executive Orders shall state the nature of the emergency and shall only be in effect until a quorum of the full Tribal Council can be established to approve or reject the Order, but in no case be effective longer than 30 days.

(2) Vice President: The Vice President shall assist the President when called upon to do so. In the absence of the President, the duties and authority of the Vice President shall be the same as those of the President.

(3) Secretary/Treasurer: The Secretary/Treasurer shall take or delegate the taking of minutes off all meetings. The Secretary/Treasurer shall issue or delegate the duty of issuing notices of all meetings and elections. The Secretary/Treasurer

shall carry out the financial directives of the Council, receive all monies and keep accurate account of the receipts and disbursements, except when these duties are otherwise delegated by the Council. The Secretary/Treasurer shall give a financial report as requested by the Council. The Secretary/Treasurer may assume the duties and responsibilities of the Tribal Court Clerk unless another person is so designated. Upon vacating his or her office, the Secretary/Treasurer shall turn over all the records and papers in his or her possession to his or her successor or to the Council.

(4) Sargent At Arms: The Sargent At Arms shall generally keep order at the meetings of the Tribe and Tribal Council, and shall call meetings back to order when necessary.

(G) Conflict of Interest for Tribal Council Members

No Council member shall vote on any matter in which they have a direct personal interest. 'Direct personal interest' shall include matters involving first-degree relatives, in-laws, and anyone living in the same household. Council member shall not vote or rule on any matter, including but not limited to employment contracts, project funding, or funding for direct services, in which he or she has a direct, significant personal, or financial interest.

(H) Forfeiture of Office and Removal of Council Members

(1) Forfeiture - Any member of the Tribal Council who moves out of Point Hope, submits a written resignation that is accepted by the Council at a regular meeting of the Council, or who is convicted of a felony of moral turpitude while in office shall automatically forfeit his or her office. When sufficient notice has been provided for meetings, a Council member may be requested to forfeit their position if he or she is absent from three successive regular meetings of the Tribal Council without being excused by the Council. A written warning must be given to the Council member before their seat is forfeited for missing meetings and an opportunity to become an active Council member again is provided.

(2) Removal - Any member of the Tribal Council found guilty by the Tribal Council of neglect of duty, gross misconduct, and offense involving dishonesty, or in serious violation of the Tikigaq ethics standards for Tribal officials may be removed from office by the Tribal Council. A minimum of 5 Tribal Council members must vote in favor of the removal. A Council member subject to removal shall first be given 10 days written notice of the charges against him or her and be given an opportunity to answer any such charges before the Tribal Council votes on the removal. If the person subject to removal fails to appear before the Council, the Council may proceed with the vote as scheduled. No member of the Tribal Council shall preside over the meeting at which his or her removal is being considered.

(l) Vacancies on the Tribal Council

(1) Declaring a seat vacant - The Council shall declare a Council seat vacant when a seat is forfeited, or when a Council member is removed, recalled, fails to qualify as a tribal member, or is physically or mentally unable to perform the duties of a council member as determined by an affirmative vote of 4 council members.

(2) Alternate to fill seat - The Tribal Council shall appoint a person to fill a vacancy to serve only until the next tribal election.

(3) Officer Positions - In the event of a vacancy in the President, Vice President, or Secretary/Treasurer position, the Council shall decide how to fill those positions until the next regular election is held.

SECTION 3 - MEMBERSHIP IN THE TIKIGAQ TRIBE

Article II of the Native Village of Point Hope IRA Constitution refers to membership in the Tribe. This Section provides additional guidelines and interpretation. The Tikigaq Tribal Council may adopt a tribal membership and enrollment Statute that provides further guidance.

(A) Base Membership Roll - Article II, Section 1 of the Native Village of Point Hope IRA Constitution defines the members of the Tribe as a list of Native residents prepared under the instructions of the Secretary of the Interior. That list was either not prepared, or cannot be found. The Tikigaq Tribal Council is preparing a base roll. Once that list is complete, the Tribal Council shall adopt it as the Tikigaq Tribal Membership Base Roll, by a Council resolution.

(B) Descendants of Members - Lineal descendants of members on the base membership roll and all Native children adopted by lineal descendants are automatically eligible to be members of the Tikigaq Tribe subject to the provisions of this Act, the IRA Constitution, and to Statutes enacted pursuant to these documents.

(C) New Members - The Council, by an affirmative vote of 5 Tribal Council members, shall have the option to adopt Alaska Natives or American Indians who are not descendants of members listed on the base roll and who have established residency in Tikigaq for at least five years immediately prior to applying, according to the provisions of a membership and enrollment Statute.

(D) Honorary Tribal Members – The Title of Honorary Tribal Member shall be reserved for a few persons recognized by the Tikigaq Tribe, who have formed a long standing, special relationship with the Tribe through inter-marriage or other substantial residency and ties with the Tribe. The Title shall not be passed on to descendents of Honorary Tribal Members, and may be revoked by an affirmative vote of at least 5 Tribal Council members for good reason. This Title does not bestow the right to vote in tribal elections, or to hold a position on the Tribal Council. A list of such members shall be kept in the tribal council records. Honorary status in the Tikigaq Tribe does not entitle a person to benefits under federal programs unless they are otherwise so qualified.

(E) Dual Enrollment – Dual enrollment for members 18 years of age and older is prohibited. Dual enrollment for members under18 is permitted, and no member under 18 may be disenrolled for any reason.

(F) Loss of Membership – Article II, Section 3 of the Tikigaq IRA Constitution describes loss of membership as: "Any member who moves away from the Village for one year shall lose his membership, or if he moves away from the Village intending not to return he shall lose his membership, or his membership may be taken away for good reason by the Village."

1. **Relinquishment:** Any member 18 years of age and older may willingly give up his or her membership through an application of relinquishment of tribal membership filed with the Tikigaq Tribal Council. No member or person eligible for membership under the age of 18 may relinquish their membership, or have their membership relinquished by a parent, guardian, or any other person representing their interests.

2. **Loss of Membership:** Membership may only be taken from tribal members 18 years of age or older for the good reasons that they have falsified information on their enrollment application and are not truly eligible for membership in the Tribe, they have been permanently banished from the Village because of danger to the safety of the Village residents, they are over 18 and have formally enrolled into another tribe, or they are new Native residents who were adopted into the tribe and subsequently moved out of the Village, breaking their ties to the Village.

3. **Moving away from Point Hope for one year:** Members 18 years of age or older who move away from the Village for one year shall not lose their membership unless they file a letter with the Tikigaq Tribal Council specifically indicating that they do not intend to move back to the Village. Members or those eligible for membership who are under 18 may not lose their membership for any reason.

4. **Moving and intentions of not returning to Tikigaq:** Membership in the Tikigaq Tribe shall not be lost due to moving away from the village unless the member who is 18 years of age or older files a letter with the Tikigaq Tribal Council specifically indicating that they do not intend to move back to the Village.

SECTION 4 – JURISDICTION OF THE TRIBE, COUNCIL, AND MEMBERSHIP

(A) Tribal Powers The powers of the Tribe are referred to in Section IV of the Native Village of Point Hope IRA Constitution. The Tribe interprets that language to mean that the Tribe has the power and authority to do anything a federally recognized tribe may do which is not against federal law.

(B) Tribal Council Powers Unless a power is specifically reserved to the Tribe, the Tikigaq Tribal Council has the authority to exercise the Tribe's jurisdiction in cooperation with the Tikigaq Tribal Court established in this Act. The jurisdiction of the Tikigaq Tribe shall extend over all the inherent powers of a federally recognized tribe, including but not limited to governmental processes internal to the Tribe and over matters arising:

1. In the Tikigaq Tribe's Indian country; and/or
2. Over all tribal members within or outside Indian country; and/or
3. Over all persons and entities who entered into consensual relations with the Tribe or tribal members, or whose activities affect the political integrity, economic security, or the health or welfare of the Tribe or tribal members; and/or
4. Over all lands and waters under the current and traditional use of the Tribe; and/or
5. Over any matters so delegated by Congress.

(C) Powers Reserved to the Membership The following powers are specifically reserved to the qualified voters of the Tikigaq Tribe acting through a general membership meeting or a properly called election:

1. **Disposing of tribal lands -** No lands or interests in lands owned by the Tribe may be sold, encumbered or disposed of without the affirmative vote of at least 51% percent of the adult resident tribal members.

2. **Land Assignments** - Nothing in this Section shall prohibit the Council from developing and administering a tribal land assignment program for residential or commercial purposes, established by Tribal Statute and approved by a referendum vote of at least 51% of the adult resident tribal members.

3. **Sovereign Immunity** - Any resolution waiving any immunity from suit for claims by a non-governmental entity over $150,000 in value, or claim by any entity seeking execution against tribal lands shall be approved by an affirmative vote of 51% of the tribal qualified tribal voters residing in Tikigaq.

SECTION 5 - MEETINGS

(A) Regular Meetings of the Tribal Council Regular meetings of the Tikigaq Council shall be held monthly: the time, place and date to be designated by the Council. All regular meetings shall be open to the general membership.

(B) Special Meetings A quorum of the Council, or the President acting alone, may call a special meeting upon giving at least twenty-four (24) hours notice to tribal members.

(C) Notice for Regular, Special, and Tribal Membership Meetings Notice for regular, special, and tribal membership meetings shall be posted in at least three public places in Point Hope.

(D) Emergency Meetings The Council may meet for an emergency meeting without notice when emergency circumstances warrant such a meeting. Any decisions made at emergency meetings shall be temporary in nature, and reconsidered at the next Council meeting where proper notice is given.

(E) Executive Session The Tribal Council may move to meet in a closed executive session during regular, special or emergency meetings of the Tribal Council when the subject matter concerns child welfare, personnel, litigation and other matters made confidential by tribal Statute. The Council shall state the general reason for going into

executive session, and may not go into executive session until all other business for the meeting is complete.

(F) Tribal Membership Meetings

1. **Calling a Tribal Membership Meeting:** A general Tribal membership meeting shall be held once a year as required under the Native Village of Point Hope IRA Constitution. Additionally, tribal membership meetings may be called by the President, or by a minimum of 4 Council members. A tribal membership meeting shall also be held upon petition signed by at least thirty percent (30%) of the adult tribal members residing in Point Hope. Notice shall be posted in at least three public places, thirty days (30) prior to tribal membership meetings.

2. **Quorum of a Tribal Membership Meeting** - A quorum of a tribal membership meeting shall be thirty percent (30%) of the adult tribal members residing in Point Hope, unless otherwise specifically provided for in the Native Village of Point Hope IRA Constitution, Constitutional Act, or by Tribal Statute.

SECTION 6 - ELECTIONS

(A) Voter Qualifications. The Tikigaq IRA Constitution allows tribal members 21 years of age and older to vote. This Act expands the age of voting to include those members who are 18 to 20 years old. The Act shall limit voting eligibility to those tribal members who are residents of Tikigaq, having resided in the Village for at least 30 days immediately prior to an election. Therefore, the qualifications to vote in a Tikigaq tribal election shall be tribal members who are eighteen (18) years of age or older, and who are residents of Tikigaq for at least 30 days immediately prior to an election.

(B) General Guidelines for Elections. All elections shall be conducted by secret balloting. The outcome of an election shall be determined by a simple majority of the qualified voters casting their votes during the election unless otherwise specified by this Act, or by Tribal Statute.

(C) Tribal Council Elections. Elections for the Tribal Council positions shall be held in the winter months in Point Hope. The Council shall set the date and shall give at least two (2) weeks notice of such elections. These notices shall be posted in public places in Point Hope prior to such elections.

(D) Special Elections. The Council may, by resolution, call a special election for the purposes of deciding a referendum, initiative, or recall, upon giving at least two (2) weeks notice to the tribal members, unless a longer notice period is specifically required by this Act or by tribal Statute. Notice shall be posted in public places in Point Hope.

(E) Election Committee. The Council shall appoint an election committee of at least two adult tribal members to supervise, administer, and conduct all tribal elections. The election judges shall certify the election of tribal officials. No election judge shall at the same time be a candidate for a position on the Council.

(F) Election Statute. An election Statute, consistent with the Native Village of Point Hope IRA Constitution and this Act, may be adopted by the Council which shall set forth the procedures to be followed in conducting each of the various types of elections the Tribe may hold.

SECTION 7 - POPULAR PARTICIPATION IN GOVERNMENT

(A) Initiative The eligible voters of the Tikigaq Tribe shall have the right to propose amend and repeal Statutes and resolutions not inconsistent with applicable tribal and federal law, through a valid petition signed by at least thirty percent (30%) of the adult tribal members residing in Point Hope. Such petitions shall be submitted to the Tribal Council. The Council shall call an election to be conducted by the Election Committee no later than sixty (60) days after receipt of the petition. If the Council fails to act on the petition, the Statute or resolution proposal may be brought before a tribal membership meeting called under the terms of Section 5 of this Act. An affirmative vote by a majority of the Tribe's eligible voters where a quorum has been established shall be required to adopt, amend or repeal such Statute or resolution proposals.

(B) Referendum The Council, by an affirmative vote of at least 3 of its members, may refer issues to the tribal membership in a tribal election. Such an election shall be conducted by the Election Committee within sixty days of such Council decision. An affirmative vote by a majority of the resident tribal voters shall be required to determine the Tribe's position on the issue submitted to a vote.

(C) Recall Any member of the Tribal Council may be recalled by the tribal voters through a petition and election process. A petition requesting such a recall, must be signed by at least 30% of the adult tribal members residing in Point Hope. The signatures must be gathered in a maximum of a 30 day period in order to make a valid petition. Tribal Council shall call a special election to consider the recall of the named Tribal Council member within 60 days upon receiving the petition. If the majority of the total number of eligible voters residing in Point Hope vote in favor of the recall, the official shall be removed. No official may be subjected to recall proceedings more than once in the course of his or her term for the same incident. If the Council fails to call a special election to consider the recall, the tribal membership may hold a tribal membership meeting to conduct such business, and a majority of the total number of eligible voters residing in Point Hope must vote in favor of the recall for it to take effect. It shall not be necessary to circulate a separate petition calling for the membership meeting; however, notice shall be posted at least 30 days prior to such a meeting. A quorum of at least 30% of the adult tribal members residing in Point Hope must be established to conduct the recall election.

(D) Initiative, Referendum, and Recall Decisions The decision of the tribal voters in initiative, referendum, and recall elections shall be binding on the Council and the Tribe and shall remain in full force until amended or rescinded by subsequent action of the voters or expires by its own terms.

SECTION 8 - RIGHTS OF TRIBAL MEMBERS

(A) Access to Tribal Records Tribal members shall have the right to review all tribal records, including financial records, during tribal office hours in accordance with procedures established by the Tribal Council, except in child welfare cases, litigation, personnel, enrollment records or other confidential records as defined by tribal Statute.

(B) Open Tribal Council Meetings Tribal members have the right to be present at all Council meetings except during executive session of the Council.

(C) Civil Rights The Tikigaq Tribe shall provide all persons within its jurisdiction the rights guaranteed by the Indian Civil Rights Act of 1968, as amended. Persons subject to the jurisdiction of the Tikigaq Tribe may bring grievances under the Indian Civil Rights Act before the Tikigaq Tribal Court. In summary, the Tikigaq tribal government shall:

1. Not prohibit the free exercise of speech, press, religion, or rights of the people to assemble peacefully or file grievances against the tribal government.

2. Not allow unreasonable search and seizure or issue search warrants without probable cause.

3. Not try anyone for the same offense twice.

4. Not make any person testify against himself in a criminal matter.

5. Not take private property for public use without paying the owner the fair market value.

6. Not deny a person the right to a speedy public trial. A speedy trial is generally assumed to be a trial within 90 days or less. The accused person must be informed of the nature of the offense he is accused of, told about the witnesses against him, be allowed to have witnesses testify and be allowed a lawyer at his own expense.

7. Not impose excessive bail or fines, nor impose cruel or unusual punishments. The Tribal Court cannot impose a penalty greater than $5,000 or one year in jail, or both for any one offense.

8. Give all persons equal protection under tribal laws.

9. Not pronounce anyone guilty of a crime or civil violation without a fair trial. The Council shall not pass an Statute and charge a person with a violation of that Statute or change penalties, after an incident (Ex Post Facto).

10. Provide anyone accused of an offense punishable by jail time the right to a trial by jury of no less than six persons.

SECTION 9 - INTERPRETATION AND SEVERABILITY

This Act shall be liberally interpreted looking toward the values and customs of our people, and to give full effect to the purposes for which it was adopted. If any provision of this Act, or its application to any person or legal entity or circumstances, is held invalid, the remainder of this Act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

SECTION 10 - SOVEREIGN IMMUNITY OF THE TIKIGAQ TRIBE

(A) Interpretation of this Act and Waiver for Enforcement of the Indian Civil Rights Act (ICRA) Nothing in this Act shall be deemed, interpreted or construed to be a waiver of any immunity from suit or execution against tribal property that the Tikigaq Tribe possesses under tribal, state or federal law, provided however, that persons subject to the jurisdiction of the Tribe may bring claims against the Tribe in the Tikigaq Tribal Court, arising under the terms of the Indian Civil Right Act.

(B) Procedures and Conditions for Waiving Tribal Sovereign Immunity to satisfy federal or state grants, contracts, or compacts, or claims by a non-governmental entity under $150,000: The Council may enact resolutions to waive immunity from suit to satisfy the conditions or requirements of federal and state grants, contracts, or compacts, or for claims by a non-governmental entity under $150,000, provided that any execution against tribal lands shall require an affirmative vote of 51% of the tribal voters. A resolution waiving such immunity from suit or execution shall be passed by an

affirmative vote of at least 4 Council members, and evidenced by a written document contemporaneously signed by Council members voting in favor of passage.

(C) Procedures and conditions for waiving tribal sovereign immunity for claims by a non-governmental entity over $150,000: Any resolution waiving any immunity from suit for claims by a non-governmental entity over $150,000 in value, or claim by any entity seeking execution against tribal lands shall require approval by an affirmative vote of 51% of the tribal qualified tribal voters residing in Tikigaq.

(D) Waivers shall be Specific - Waivers of Tribal Sovereign Immunity shall not be general waivers of immunity shall not be general, but must specify the parties who may bring an action against the Tribe, duration for bringing a cause of action, the amount of funds or other property upon which execution may be had, the nature of the transaction giving rise to claims, and any other limitations deemed appropriate by the Council.

(E) Voiding Prior Waivers Unless Compliant with this Act - Upon adoption of this Act, all prior waivers of immunity from suit or execution of the Tikigaq Tribe shall be void, unless claims arising under such waivers are brought within two years of adoption of this Act or such waivers comply with this Act.

SECTION 11 – SAVINGS CLAUSE

Unless inconsistent with this Act, all tribal legislation enacted prior to adoption of this Act shall remain in effect.

SECTION 12 – AMENDMENTS

This Act may be amended by a majority vote of the qualified voters of the Tikigaq Tribe voting in an election called for that purpose in which at least thirty percent (30%) of the adult resident tribal members vote in such election, and notice has been posted at least 2 weeks prior to the election.

CERTIFICATE OF ADOPTION

This Constitutional Act was submitted to a vote of the Tikigaq Tribal Council on _____, and was duly (adopted) (rejected) by a vote of _____ for, and _____ against, during a regularly scheduled meeting of the Tikigaq Tribal Council for which notice was posted and tribal members had an opportunity to attend and voice their opinions and concerns about this Act.

_____ **President**

_____ **Vice President**

_____ **Secretary/Treasurer**

_____ **Council Member**

_____ **Council Member**

_____ **Council Member**

_____ **Council Member**